



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ISCR Case No. 17-02927

Applicant for Security Clearance

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro Se*

10/17/2018

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant's longstanding U.S. ties mitigate security concerns raised by his familial relations in Russia. Foreign influence security concerns are mitigated. Clearance is granted.

**History of Case**

Applicant submitted a security clearance application (SCA) on May 7, 2015. On September 9, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline B. Applicant answered the SOR on October 16, 2017, and requested a hearing before an administrative judge.

I was assigned to the case on April 16, 2018. On May 31, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 14, 2018. I convened the hearing as scheduled. Government's Exhibits (GE) 1 through 3 and Applicant's Exhibits (AE) A and B, were admitted without objection. Applicant testified, and I agreed to hold the record open until July 14, 2018, in the event either party wanted to submit additional documents. Applicant submitted two documents post-hearing (AE C and D), which I admitted without objection. I received the completed transcript (Tr.) on June 25, 2018.

### **Procedural Ruling**

At the hearing, Applicant requested a continuance for his hearing. He explained that his wife is currently in the process of obtaining her United States citizenship, but as of this date, she had not yet received it. Applicant requested to continue his security clearance hearing until his wife became a naturalized U.S. citizen. Government Department Counsel objected to the continuance noting that Applicant's case has been pending for an extended period of time. I agreed with Department Counsel that the hearing should proceed since Applicant did not demonstrate good cause to continue his hearing. (Tr. 8-10)

### **Administrative Notice**

I took administrative notice of facts concerning Russia. Those facts are set forth in the Government's Request for Administrative Notice for Russia, marked as GE 3. These documents are included in the record. Administrative or official notice is the appropriate type of notice used for administrative proceedings. See *McLeod v. Immigration and Naturalization Service*, 802 F.2d 89, 93 n.4 (3d Cir. 1986)). Usually administrative notice at security clearance proceedings is accorded to facts that are either well known or from government reports. See Stein, ADMINISTRATIVE LAW, Section 25.01 (Bender & Co. 2006) (listing fifteen types of facts for administrative notice). The facts administratively noticed are limited to matters of general knowledge and matters not subject to reasonable dispute. Those facts are set out in the Findings of Fact, below. (Tr. 14-15; GE 3)

### **Findings of Fact**

Applicant's SOR response admitted both of the SOR allegations. Applicant, age 30, was born and raised in the United States. Applicant earned a bachelor's degree in 2012, and he received certifications in aerospace project management and systems engineering from his current DOD employer. Applicant is an aircraft structural engineer and has been employed by his DOD employer since March 2013. Applicant does not currently possess a DOD security clearance. (Tr. 20-21, 30, 32, GE 1,

Applicant met his wife during the summer of 2009 while they were both working as lifeguards. She had recently graduated from college in Russia with a bachelor's degree in bank administration. At the end of summer 2009, Applicant's girlfriend returned to Russia. They agreed to maintain a long-distance relationship and kept in touch through e-mail and Skype. Applicant visited his girlfriend in Russia from late December 2009 to early January 2010. Shortly thereafter, Applicant discovered she was pregnant. In July 2010, he visited his girlfriend in Russia for a couple of weeks. Their son was born in Russia in October 2010. Applicant visited Russia again from December 2010 to January 2011. Applicant sponsored his fiancé to come to the U.S. In May 2011, Applicant's fiancé and son moved permanently to the United States. Applicant and his fiancé were married in August 2011 in the United States. (Tr. 22-23, 25-27, 29-30, 32; GE 1, 2)

Applicant's wife is 31 years old, she was born and raised in Russia, and she is currently living in the United States with Applicant and their son, age 8. Their son is a citizen of the U.S. At the time of the hearing, she had Russian citizenship and possessed a valid Russian passport that was scheduled to expire in April 2019. Post-hearing documentation, however, disclosed Applicant's wife was scheduled to appear for a U.S. Naturalization Oath ceremony in August 2018. (AE D) Applicant and his wife have lived together in the United States since 2011. She is employed as a newborn photographer. Applicant and his spouse do not have any financial interests in Russia, and his wife does not expect any foreign inheritance interests in the future. (Tr. 26-27, 31, 42, 45; GE 1)

Applicant's parents-in-law are citizens and residents of Russia. Applicant stated he is not particularly close to his parents-in-law due to the language barrier. He speaks to them on rare occasions, but his wife maintains monthly contact with them. Applicant testified that once his wife obtains her U.S. citizenship, it is her intention to renounce her Russian citizenship and sponsor her parents for immigration to the U.S. Her parents have visited and stayed at their home in 2016 for about three weeks, and then during the summer months of 2017 and 2018, to babysit their grandson. Applicant's parents-in-law want to move to the U.S. and become naturalized U.S. citizens. They want to live close to their only child and grandson. (Tr. 17, 27, 35-36, 39-41, 43)

Applicant's mother-in-law, age 58, and father-in-law, age 55, own a clothing store in Russia. Business in their city has been very slow and they closed their store this summer due to low sales. They live in a condominium in Russia. Neither have any known connection to the Russian government, military, or its intelligence services. (Tr. 33-36, 40-41, 46)

Applicant has taken security training taught by Federal Bureau of Investigations (FBI) agents for security risks and corporate espionage. He was provided a direct phone number to call if he is ever approached by anyone asking him to disclose proprietary or classified information. Applicant would immediately report any such incident to the FBI. (Tr. 44)

### **Administrative Notice – The Russian Federation (Russia)<sup>1</sup>**

Russia has a highly centralized, authoritarian political system dominated by President Vladimir Putin. Although the United States has long sought a full and constructive relationship with Russia, current relations between the two cold war enemies appears to have again turned adversarial. Of note, in May 2017, the Director of National Intelligence (DNI) reported to Congress that:

Russia is a full-scope cyber actor that will remain a major threat to U.S. Government, military, diplomatic, commercial, and critical infrastructure. Moscow has a highly advanced offensive cyber program, and in recent years, the Kremlin has assumed a more aggressive cyber posture. This

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<sup>1</sup> The information herein on Russia is generally taken from GE 3.

aggressiveness was evidence in Russia's efforts to influence the 2016 U.S. election, and we assess that only Russia's senior-most officials could have authorized the 2016 US election-focused data thefts and disclosures, based on the scope and sensitivity of the targets. Outside the United States, Russian actors have conducted damaging and disruptive cyber attacks, including on critical infrastructure networks. In some cases, Russian intelligence actors have masqueraded as third parties, hiding behind false online personas designed to cause the victim to misattribute the source of the attack. Russia has also leveraged cyberspace to seek to influence public opinion across Europe and Eurasia. We assess that Russian cyber operations will continue to target the United States and its allies to gather intelligence, support Russian decision making, conduct influence operations to support Russian military and political objectives, and prepare the cyber environment for future contingencies.<sup>2</sup>

The DNI went on to state that leading state intelligence threats to U.S. interests will continue to come from two main countries, one of which is Russia.<sup>3</sup> And, that "Russia is likely to be more assertive in global affairs, more unpredictable in its approach to the United States, and more authoritarian in its approach to domestic politics."<sup>4</sup> A recent U.S. State Department human rights report on Russia reflects the commission of significant human rights abuses.

## **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2, describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

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<sup>2</sup> GE 3, *2017 Worldwide Threat Assessment* at 1.

<sup>3</sup> GE 3, Item 1 at 9, Counterintelligence.

<sup>4</sup> GE 3, Item 1 at 18, Russia.

According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B: Foreign Influence**

The security concern relating to the guideline for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is

known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline includes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The mere possession of close family ties with a person in a foreign country is not, as a matter of law, disqualifying under Guideline B. However, if only one relative lives in a foreign country and an applicant has contacts with that relative, that factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information. See ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

AG ¶ 7(a) requires evidence of a “heightened risk.” The “heightened risk” required to raise this disqualifying condition is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a close relationship with an individual living under a foreign government. The mere possession of a close relationship with an individual in a foreign country is not, as a matter of law, disqualifying under Guideline B. If an applicant has such a relationship, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.<sup>5</sup>

As noted, a heightened risk is associated with the Russian government given its persistent espionage and cyberattacks against the United States, and human-rights problems. Here, Applicant’s relationship to his wife’s family in Russia is far deeper and more than casual, as previously reported. His parents-in-law have lived in his home the past two summers babysitting his young son while Applicant and his wife work. Applicant’s wife and her parents maintain frequent and regular contact. After considering

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<sup>5</sup> See *generally* ISCR Case No. 03-02382 at 5 (App. Bd. Feb. 15, 2006); ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

and weighing the evidence, I find that Applicant did not rebut the legal presumption of close familial bonds or ties to his wife's parents. The relationship with his wife and his parents-in-law leave him vulnerable to foreign influence, and creates a heightened risk of foreign exploitation and coercion and the potential risk for a conflict of interest. AG ¶¶ 7(a) and 7(b) are established.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation. The guideline includes several conditions that could mitigate security concerns under AG ¶ 8. The following are potentially applicable in this case:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

An applicant with relatives, financial interests or other substantial connections to a foreign country faces a high, but not insurmountable hurdle, in mitigating security concerns raised by such foreign ties. An applicant is not required "to sever all ties with a foreign country before he or she can be granted access to classified information."<sup>6</sup> However, what factor or combination of factors may mitigate security concerns raised by an applicant with relatives in a foreign country is not easily identifiable or quantifiable.<sup>7</sup> Moreover, an applicant with familial or other connections to a hostile foreign country faces a heavy burden in mitigating security concerns raised by such foreign ties.<sup>8</sup>

Applicant's strong and longstanding ties to the United States, including his work as a federal contractor, raises favorable inferences regarding his suitability.

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<sup>6</sup> ISCR Case No. 07-13739 at 4 (App. Bd. Nov. 12, 2008).

<sup>7</sup> ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

<sup>8</sup> ISCR Case No. 12-05092 at 5 (App. Bd. Mar. 22, 2017).

Additionally, there is no evidence that Russia or other foreign power has tried to use his wife's family in Russia as a means to influence him. The government has no burden of showing that Russian officials have attempted to exploit Applicant; however, if such evidence existed, it would cause grave security concerns about foreign influence. His wife's recent oath of allegiance to the United States and their son's U.S. citizenship demonstrate his and his immediate family's deep connections to the U.S. Applicant's security training, honesty in self-reporting his foreign connections, and the candor he exhibited at hearing are sufficient to fully mitigate the security concerns raised by Applicant's familial connections to Russia. Applicant can be expected to resolve any conflict of interest with respect to Russia in favor of the United States.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person and the heightened risk associated with Russia, Applicant has mitigated the foreign influence security concerns at issue.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a.-1.b.:	For Applicant



## **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is granted.

Pamela C. Benson  
Administrative Judge